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20 Attorneys for Defendant and Counter Claimant Acacia Communications, Inc.

21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 **ViaSat, Inc.,**

24 *a Delaware corporation,*

25 Plaintiff

26 and Counter Defendant,

27 v.

28 **Acacia Communications, Inc.,**

a Delaware corporation,

Defendant

and Counter Claimant.

Case No. 3:16-cv-00463-BEN-JMA

***EX PARTE* APPLICATION TO
CONTINUE THE UPCOMING
FINAL PRETRIAL CONFERENCE
AND RELATED DEADLINES**

Judge: Hon. Roger T. Benitez

Mag. Judge: Hon. Jan M. Adler

**NO ORAL ARGUMENT
APPLICATION UNDER
SUBMISSION**

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE that Defendant and Counter Claimant Acacia
3 Communications, Inc. ("Acacia") applies for an Order to continue the upcoming
4 August 6, 2018 Final Pretrial Conference and related pretrial deadlines until after the
5 resolution of the parties' seven pending and potentially dispositive motions for
6 summary judgment and to strike and/or exclude expert opinion testimony.
7 Continuing the Final Pretrial Conference and related pretrial deadlines would avoid
8 unnecessarily consuming the Court's and the parties' resources while the motions are
9 pending.

10 The Court scheduled the Final Pretrial Conference for less than a month from
11 now, on August 6, 2018, at 10:30 AM. (Dkt. No. 168). Pursuant to the Court's order,
12 a number of other pre-trial filings and submissions will be due over the course of next
13 month, with deadlines falling on July 9, 16, 20, and 30. (*Id.*).

14 Good cause exists for continuing the Final Pretrial Conference and these other
15 pretrial deadlines. As the Court is aware, the parties have seven pending motions,
16 several of which are potentially dispositive. (Dkt. Nos. 75, 83, 86, 89, 93, 95, 98). The
17 Court had previously consolidated the hearings on these motions into a single hearing
18 date, set for April 30, 2018. (Dkt. No. 152, 157). The Court thereafter vacated the
19 hearings. (Dkt No. 160). Resolving those motions may also resolve some or all of the
20 issues in dispute in this case, and certainly would affect the parties' pretrial disclosures
21 leading up to the Final Pretrial Conference.

22 It would be inefficient and impractical for the parties to prepare pretrial
23 disclosures without knowing what issues (if any) remain for trial; and accordingly the
24 Court's and the parties' pretrial efforts may be wasted, in whole or in part. Hence,
25 both the Court and the parties will benefit from continuing the Final Pretrial
26 Conference and associated deadlines until after the Court resolves the pending
27 motions.

28

1 Acacia therefore respectfully requests that the Court issue an amended
2 scheduling order in the proposed form emailed to chambers. This *Ex Parte*
3 Application is based on the good cause set forth above, and all of the pleadings and
4 exhibits on file herein.

5
6 Date: July 9, 2018

Respectfully Submitted,

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8 WOLF, GREENFIELD & SACKS, P.C.

9 By: *s/Michael A. Albert*

10 Michael A. Albert

11 Hunter D. Keeton

12 Stuart V. C. Duncan Smith

13 Attorneys for Defendant and Counter
14 Claimant Acacia Communications, Inc.
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LOCAL RULE 83.3(G) DECLARATION

On July 9, 2018, I conferred with counsel for ViaSat, Inc., at which time I provided notice of Acacia Communications, Inc.'s *Ex Parte* Application To Continue The Upcoming Final Pretrial Conference and Related Deadlines. I declare under penalty of perjury that the foregoing is true and correct.

Date: July 9, 2018

s/Michael A. Albert

Michael A. Albert

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that, to the extent they are not registered CM/ECF Users, I am causing the foregoing document to be served by electronic means via email upon counsel for ViaSat, Inc., per the agreement of counsel.

Date: July 9, 2018

s/Michael A. Albert

Michael A. Albert